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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA
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9 TUCSON HERPETOLOGICAL)
10 SOCIETY; DEFENDERS OF WILDLIFE;)
11 CENTER FOR BIOLOGICAL)
12 DIVERSITY; HORNED LIZARD)
13 CONSERVATION SOCIETY; SIERRA)
14 CLUB; DR. WENDY HODGES; and DR.)
15 FRANCIS ALLAN MUTH,)

16 Plaintiffs,)

17 vs.)

18 GALE NORTON, in her official capacity)
19 of Secretary of the Interior; DALE HALL,)
20 in his official capacity of Director of the)
21 U.S. Fish and Wildlife Service,)

22 Defendants.)
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No. CV-04-0075-PHX-NVW

MEMORANDUM


21 The court has this day entered a final Judgment in this action. This memorandum
22 addresses some of the disputes between the parties over the form of judgment to forestall
23 wrong inferences from the omission of some language from the Judgment.

24 Plaintiffs request judgment language that additional public comment be allowed and
25 that the determination on remand be made on the basis of the best scientific and commercial
26 data available. The court's omission of such language is not a determination on either issue.
27 The parties' motions and briefs did not address these issues on remand. Moreover, the
28 Defendants must comply with other applicable law in the proceedings on remand, whether

1 or not reiterated in the Judgment. The Defendants are charged with complying with
2 applicable law, and if they err in judging what that is, they may be answerable for it in the
3 future. At this time, however, the dispute is too contingent to require judgment language.

4 Similarly, the Defendants request language that, if the Fish and Wildlife Service is
5 unable to make a final determination by April 30, 2006, it shall so state, perhaps implying
6 that that would be a sufficient compliance with the Judgment. The Judgment as entered
7 requires final action by April 30, 2006. However, if events should leave the Defendants
8 unable to comply with that obligation despite their diligence, they are not precluded from
9 seeking relief from that part of the Judgment upon a proper showing at that time.

10 DATED this 17th day of November, 2005.

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Neil V. Wake
United States District Judge
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